

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a	)	CC Docket 98-146
Reasonable and Timely Fashion, and	)	
Possible Steps to Accelerate Such	)	
Deployment Pursuant to Section 706	)	
of the Telecommunications Act of 1996	)	

**REPLY COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. Introduction**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) hereby submits these replies to comments submitted in response to the Federal Communications Commission’s Third Notice of Inquiry in the above-captioned proceeding.<sup>1</sup> OPASTCO is a national trade association representing over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C.

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<sup>1</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Third Notice of Inquiry, CC Docket No. 98-146, FCC 01-223 (rel. Aug. 10, 2001) (“NOI”).

§153(37).

OPASTCO's initial comments in response to the NOI stated that advanced services are being deployed in areas served by rural carriers in a reasonable and timely manner to the extent market forces, technological limitations and regulatory impediments allow. OPASTCO also stated that in order to encourage investment, the Commission should immediately freeze the authorized rate of return at 11.25 percent, adhere to Sec. 309(j) of the Communications Act, and permit accelerated depreciation. These replies highlight the need for minimizing the regulatory burdens placed upon small, rural carriers.

## **II. The Commission should reverse its tendency to impose inappropriate “one-size-fits-all” regulations on small, rural carriers**

In comments filed in response to this docket's previous notices of inquiry, OPASTCO noted that regulatory burdens would only impede the delivery of advanced services in communities served by small, rural carriers.<sup>2</sup> Commenting parties to the current NOI, including several that are not telecommunications carriers, also demonstrated that regulations serve as impediments to investment.<sup>3</sup> As Intel pointed out, “[m]any financial analysts agree that current regulations are discouraging broadband deployment.”<sup>4</sup> The National Grange correctly noted that excessive regulation “has a negative impact on the decision to invest in broadband in the future, especially in areas where there are fewer potential customers per mile, as in rural communities.”<sup>5</sup> Similarly, the Progress and Freedom Foundation stated:

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<sup>2</sup> OPASTCO comments (fil. Sept. 14, 1998), pp. 4-8; OPASTCO comments (fil. March 20, 2000), pp. 6-9.

<sup>3</sup> The National Grange of the Order of Patrons of Husbandry (“National Grange”), pp. 7-8; Intel Corporation (“Intel”), p. 2, pp. 11-15; Progress & Freedom Foundation (“PFF”), pp. 18-28.

<sup>4</sup> Intel, pp. 14-15. *See also* PFF, pp. 21-22.

<sup>5</sup> National Grange, p. 7.

The ability to serve Americans, particularly those in rural areas, depends on the ability of network operators to obtain appropriate economies of scale and scope in their deployments. Regulation of these deployments is likely to reduce their chances of obtaining either of these economic factors and could severely retard the deployment of advanced infrastructures.<sup>6</sup>

Small carriers serving rural consumers have the least ability to generate economies of scale and scope. Larger organizations have significant resources at their disposal, in addition to low-cost urban markets that can compensate, at least in part, for deployment in higher-cost settings. In contrast, OPASTCO carriers are small businesses that have no low-cost base that might help balance out the high costs of deploying in sparsely populated areas. As the United States Telecom Association (“USTA”) observed:

ILECs serving smaller and rural areas are particularly sensitive to the adverse impact of regulations that create disincentives to investments in network upgrades or deployment of new networks to provide advanced communications services.<sup>7</sup>

In spite of the heightened negative effects regulations have upon the abilities of rural companies to deploy advanced services to consumers, the Commission has taken a one-size-fits-all approach to matters such as line sharing, unbundling and collocation.<sup>8</sup> The Commission has swept small rural carriers into a regulatory regime that was crafted with only a handful of the nation’s largest carriers in mind.<sup>9</sup> The behavior and circumstances of small, rural carriers were not considered.

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<sup>6</sup> PFF, p. 18 (citation omitted).

<sup>7</sup> USTA, p. i.

<sup>8</sup> See *Ibid.*, pp. 9-13.

<sup>9</sup> See OPASTCO comments and response to the Initial Regulatory Flexibility Analysis, *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, FCC 00-297 (fil. Oct. 12, 2000); comments and reply comments of the Rural Telephone Coalition, CC Docket No. 98-147, FCC 99-48 (fil. June 15, 1999 and July 22, 1999).

As stated in OPASTCO's initial comments, rural carriers overcome considerable obstacles to deploy advanced services where feasible. The Commission cannot control factors such as market forces, population density or difficult terrain.<sup>10</sup> Yet it need not impose regulations upon small carriers with the assumption that they have resources and market conditions that are comparable to large carriers.

Rather, the Commission should genuinely examine how regulations designed for large carriers, when applied indiscriminately to small carriers that serve rural consumers, compound the barriers to investment that Sec. 706 seeks to reduce. The Commission should refrain from imposing burdens on small carriers simply because it deems them appropriate for large carriers.

Avoidance of unsuitable regulations, in addition to the recommendations proposed in OPASTCO's initial comments, will help speed the deployment of advanced services in rural areas by providers that have already demonstrated a commitment to serving these high-cost consumers. At the same time, an appropriately lighter regulatory regime for rural wireline carriers will not impede market entry by advanced service providers who also wish to serve rural consumers via satellite, cable, wireless or other facilities-based mediums.

## **V. Conclusion**

Pursuant to Sec. 706, the Commission can take deregulatory actions that will lower barriers to investment in facilities that can bring advanced services to consumers in areas served by rural carriers. As outlined in our comments and replies, these actions include: immediately freezing the authorized rate of return at 11.25 percent and closing CC Docket No. 98-166;

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<sup>10</sup> See, Rural Task Force White Paper #2: *The Rural Difference*, available at <http://www.wutc.wa.gov/rtf>. The same factors which make the provision of basic voice telephone service more difficult and expensive in

adhering to Sec. 309(j); permitting more accurate depreciation of equipment; and declining to impose inappropriate, “one-size-fits-all” regulations designed for large companies upon small rural carriers.

Respectfully submitted,

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ADVANCEMENT OF SMALL  
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rural areas have similar effects on the deployment of advanced services.

**Certificate of Service**

I, Alicia C. Reid, hereby certify that copies of OPASTCO's comments were sent on this, the 9<sup>th</sup> day of October, 2001 by first class United States mail, postage prepaid, to those listed on the attached sheet.

/s/ Alicia C. Reid

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